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I. Availability of Coverage

Chapter 175: Section 193U. Discrimination based on specialty practiced; risk classification; definitions

Availability of Coverages / Non-Discrimination

_____ Every medical malpractice insurer shall make available to every health care provider every medical malpractice insurance coverage which it provides to any health care provider.

Definition of Health Care Provider

“Health care provider” means any category of health care provider that was authorized to obtain medical malpractice insurance from the Joint Underwriting Association established by section 6 of chapter 362 of the acts of 1975, including but not limited to, a doctor of medicine, osteopathy, optometry, dental science, podiatry, chiropractic, or registered nurse licensed under the provisions of chapter 112, an intern, fellow or medical

officer licensed under the provisions of section 9 of said chapter 112 or a licensed hospital, clinic, or nursing home, and its agents and employees, and any other category of health care provider as the commissioner of insurance may from time to time designate as eligible for being ceded to the medical malpractice reinsurance plan.

Requirements to Offer Coverage for Health Care Specialties

_____ No medical malpractice insurer shall discriminate against any health care provider based upon the specialty practiced by health care providers within such category.

This section does not prohibit a medical malpractice insurer from establishing reasonable classifications of risks and premium charges based upon the relative risk associated with practice in a particular specialty.

If, after a hearing, the Commissioner determines that a medical malpractice insurer has discriminated against any health care provider in violation of this section, she shall take such action as is necessary to eliminate the effect of the discrimination and to prevent further violations.

This action can include, without limitation, the suspension or revocation of the medical malpractice insurer's license, admission, authorization or approval to write medical malpractice insurance on risks within the Commonwealth.

Ceding of Policy

_____ Only medical malpractice insurers may cede any medical malpractice insurance policy issued to a health care provider to the Massachusetts medical malpractice reinsurance plan.

II. Medical Malpractice Rate Filings

Chapter 175A: Section 4: Application; exceptions

Applicability

This chapter shall apply to risks and operations in this Commonwealth insured by insurance companies authorized to transact business in this Commonwealth under subdivisions (d), (e) and (f) of the 2nd clause, under the 3rd, 4th, and 5th clauses, under subdivisions (b), and (c) of the 6th clause, and under the 7th, 8th, 9th, 10th and 12th clauses of MGL c. 175, s. 47, even though such risks or operations are covered by policies or contracts of insurance issued pursuant to MGL c. 175, s. 22A providing coverage under the aforementioned and any other clauses or subdivisions, other than subdivision (e) of the 6th clause, of MGL c. 175, s. 47 which, as part of the coverage thereof, insure real or personal property against loss or damage by fire at residential locations or which, as part of the coverage thereof, insure the output of a manufacturer against such loss or damage by fire at locations other than his manufacturing premises.

(SEE SPECIFIC STATUTES FOR APPLICABILITY OF SECTION TO FILING)

Coverage That Section Is Not Applicable To

The provisions of this chapter shall not apply to reinsurance other than joint reinsurance to the extent stated in section 13, nor to insurance against loss of or damage to aircraft or against liability arising out of the ownership, maintenance or use of aircraft, nor to motor vehicle liability insurance coverage which is subject to the provisions of MGL c. 175, s. 113B, including those coverages described in MGL c. 90, s. 34A and MGL c. 175, s. 113C except as provided through a plan approved under MGL c. 175, 113H.

(SEE SPECIFIC STATUTES FOR APPLICABILITY OF SECTION TO FILING)

Dual Regulation/Determination by the Commissioner of Applicable Regulatory Law

If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory law of this Commonwealth, an insurer to which both laws are otherwise applicable shall file with the Commissioner a designation as to which rate regulatory law shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage.

Chapter 175A: Section 5. Rates; regulatory provisions; insurance company groups

Factors In Making Rates For Coverages Specified In Chapter 175A, section 4

Coverages specified in MGL c. 175A, s. 4 shall have their rates made in accordance with the following provisions:

- _____ 1. Due consideration shall be given to past and prospective loss experience, within and outside this Commonwealth, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to investment income on unearned premium reserves and loss reserves, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this Commonwealth, and to all other relevant factors within and outside this Commonwealth.
- _____ 2. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- _____ 3. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards

may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

_____ 4. Rates shall not be excessive, inadequate or unfairly discriminatory.

Uniformity Among Insurers

Except to the extent necessary to meet the provisions of subdivision 4 above, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

Section Does Not Prohibit

_____ Nothing in this section shall be taken to prohibit as unreasonable or unfairly discriminatory the establishment of classifications or modifications of classifications or risks based upon size, expense, management, individual experience, purpose of insurance, location or dispersion of hazard, or any other reasonable considerations, provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

Nothing in this chapter shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions or between insurers and their employees with respect to compensation.

Filings By Insurance Company Groups or Similar insurance Trade Designation

Two (2) or more insurers who by virtue of their business associations in the United States represent themselves to be or are customarily known as an "insurance company group," or similar insurance trade designation, shall have the right to make the same filings or to use the same rates for each such insurer subject to the provisions of subdivisions 1 to 4, inclusive, of subsection (a) of this section; and nothing contained in this chapter shall be construed to prohibit an agreement to make the same filings or use the same rates and concerted action in connection with such filings or rates by such insurers.

This subsection shall not apply to two or more insurers who are not under the same common executive or general management or control and who act in concert in underwriting groups or pools.

Chapter 175A: Section 6. Rules, rates, classifications; filing with Commissioner; waiver of filing; excessive rate on specific risk; approval

What Must Be Filed

_____ Every insurer shall file with the Commissioner or his designated representative every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use.

Time For Filing

_____ Every such filing shall be made with the Commissioner at least 15 days prior to the proposed effective date thereof and shall indicate the character and extent of coverage contemplated and the extent and nature of any change in rates, rating plans or premium charges. The Commissioner may, by order, delay the effective date for not more than 30 additional days in any case where she determines such delay is needed to properly examine the filing and any supporting information filed as requested or to permit a hearing thereon; provided further, however, that, if such filing is made by a medical malpractice insurer with respect to medical malpractice insurance, the Commissioner may further delay the effective date of such filing for not more than 90 additional days.

Nature of Information to Support Filing

_____ The Commissioner may require such insurer to furnish the information upon which it supports such filing. Any filing may be supported by (1) the experience or judgment of the insurer or rating organization making the filing, (2) the experience of other insurers or rating organizations, or (3) any other factors which the insurer or rating organization deems relevant. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

Filing Through Rating Organization

An insurer may satisfy its obligation to make filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Commissioner to accept such filings on its behalf; provided, that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

Changes in Filing Requirements/Examination By Commissioner

Under such rules and regulations as she shall adopt, the Commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practically be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The Commissioner may make such examination as she may deem advisable to ascertain whether any rates affected by such order are excessive, inadequate or unfairly discriminatory.

Excess Rates

Upon the written application of the insured, stating his reasons therefor, filed with and approved by the Commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

What Filings May Consist of

_____ Filings may consist of manuals of classifications, rules and rates, and rating plans providing for indivisible rate or single premium for policies or contracts of insurance, including policies or contracts of insurance issued by such insurers

under the authority of MGL c. 175, s. 22A and providing coverage against the hazards specified in more than one of the clauses or subdivisions of MGL c. 175, s. 47.

Chapter 175A: Section 7. Improper filing; hearings; aggrieved persons; remedies

Hearing On Improper Filings/Issuance of Order Deeming Filing No Longer Effective

If at any time the Commissioner finds that a filing does not meet the requirements of this chapter, she shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects she finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization.

Application For Review By The Commissioner

Any person or organization aggrieved with respect to any filing which is in effect may make written application to the Commissioner for a hearing thereon; provided, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection.

Contents of Application/Hearing/ Determination/Issuance Of Order

The application shall specify the grounds to be relied upon by the applicant.

If the Commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if her grounds are established, and that such grounds otherwise justify holding such a hearing, she shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

If, after such hearing, the Commissioner finds that the filing does not meet the requirements of this chapter, she shall issue an order specifying in what respects she finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization.

Additional Hearings

The Commissioner may also call a hearing at any time prior to the proposed effective date of any filing or any later effective date called for by order made pursuant to this chapter. If after such hearing the Commissioner finds that any such filing will not meet the requirements of this chapter, said filing shall not take effect.

V. MEDICAL PROFESSIONAL MUTUAL INSURANCE COMPANY C. 330 OF THE ACTS OF 1994

The medical professional mutual insurance company, established by Chapter 330 of the Acts of 1994, is not authorized to issue policies of insurance to doctors of optometry, podiatry or chiropractic, registered nurses licensed under the provisions of Chapter 112 of the General Laws or licensed nursing homes, its agents and employees.

The medical professional mutual insurance company is authorized to issue non-assessable policies.

The medical professional mutual insurance company shall provide written notice and an opportunity for comment, for a period not to exceed forty-five days from the date of such notice, to the Massachusetts medical society, the Massachusetts hospital association, the American College of Nurse-midwives, Massachusetts Chapter, and the Massachusetts dental society prior to making (a) making any filing, either directly or through any rating organization, with the commissioner of insurance required by section six of chapter one hundred and seventy-five A of the General Laws, which affects rates or risks classifications applicable to members of that professional association.

IV. Additional Filing Provisions

Unfair and Deceptive Trade Practices:

_____ Any filing not in compliance with the above referenced requirements may be deemed to be in violation of the provisions of Chapter 176D of the Massachusetts General Laws. We hereby certify that the provisions set forth in this filing do not entail any intentional unfair and deceptive trade practices. Furthermore, we understand that we are subject to the penalties associated with practices that are in clear violation of this statute.